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Amendment No. 1 to SB0588

**Williams
Signature of Sponsor**

AMEND Senate Bill No. 588*

House Bill No. 900

By deleting all of the language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 54, Chapter 5, Part 8, is amended by deleting § 54-5-802 in its entirety and by substituting instead the following language:

Section 54-5-802. As used in this part, unless the context otherwise requires:

(1) "Betterment" means any upgrading of the facility being relocated that is not attributable to the highway construction and is made solely for the benefit of, and at the election of, the utility;

(2) "Commissioner" means the commissioner of transportation;

(3) "Cost of relocation" means the entire amount paid by or on behalf of the utility properly attributable to the relocation after deducting from that amount any betterment of the new facility and any salvage value derived from the old facility. The cost of relocation may include, without limitation, engineering, removal and installation costs, but shall not include inspection costs or the cost of any betterment to the utility's facilities;

(4) "Department" means the department of transportation.

(5) "Public highway" means any highway included on the state highway system or interstate system and any highway, road or street that

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is owned, maintained or owned and maintained by a county or municipality, including the right-of-way for such highway, road or street;

(6) "Relocation" means the adjustment of a utility facility as the commissioner may determine is necessary or appropriate in connection with the construction or reconstruction of a public highway; relocation includes:

(A) Removing and reinstalling the utility facility, including necessary temporary facilities;

(B) Moving, rearranging or changing the type of existing facilities; and

(C) Taking any necessary safety and protective measures.

For the purposes of this part, relocation also includes the construction of a replacement facility that is both functionally equivalent to, but not a betterment of, the existing facility and necessary for continuous operation of the utility service, the project economy or sequence of highway construction;

(7) "Salvage value" means the amount received from the sale of utility property that has been removed or, if retained for reuse, the amount at which the recovered material is charged to the utility's accounts; and

(8) "Utility" means a privately, publicly or cooperatively owned line, facility or system used, available for use or formerly used to transmit

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or distribute communications, electricity, gas, liquids, steam, sewerage, or other materials to the public.

SECTION 2. Tennessee Code Annotated, Title 54, Chapter 5, Part 8, is amended by deleting § 54-5-804 in its entirety and by substituting instead the following language:

Section 54-5-804.

(a) The commissioner is authorized to reimburse a utility for the cost of relocation, and to include such cost as a highway construction project cost, where the cost of relocation arises from the relocation of a utility facility located on public highway right-of-way and the highway construction project is undertaken by the department, subject to the following conditions:

(1) The utility shall fully comply with all provisions of § 54-5-854(b) including the preparation and submission to the department of the utility's relocation plan, cost estimate and schedule of calendar days for completing the relocation, within the time period specified or within such additional time as may be allowed under § 54-5-854(b); and

(2) The utility shall either:

(A) Enter into a written agreement with the commissioner to include the relocation as a part of the department's highway construction contract; provided that

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such agreement may provide that the utility shall perform certain relocation work with its own union employees as required under a negotiated organized labor contract but, in such case, the utility shall be required to reimburse the department for all relocation costs if it fails to timely perform its relocation work as provided in the agreement with the commissioner; or

(B) Enter into a written agreement with the commissioner to remove all utility facilities that conflict with the highway construction, as determined by the department, prior to the letting of the department's construction contract, and otherwise perform and complete the utility relocation in accordance with approved relocation plans and schedule of calendar days; provided that such agreement may provide that, in the event that the department does not undertake the highway construction project within a specified time, the utility shall be reimbursed for such relocation work as it has timely performed in accordance with the approved plans and schedule.

(3) Notwithstanding any other provision of law to the contrary, the utility shall be responsible, at its own expense, to

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inspect all phases of the utility relocation to ensure that the removal, installation or removal and installation of the utility facility is done in accordance with all applicable specifications and safety codes.

(b) The cost of relocation for which a utility may be reimbursed under subsection (a) shall nevertheless be borne in full by the utility without reimbursement by the department where, if required by law, the utility does not have a valid permit to locate on the public highway right-of-way from the department or from the county or municipality having jurisdiction over the right-of-way.

(c) The department shall make no reimbursement payment to a utility as authorized under subsection (a) unless, and until, the commissioner is satisfied that the relocation has been performed in accordance with the relocation plans and schedule of calendar days approved by the department.

(d) To ensure that the department shall never pay any cost of relocation for which it cannot receive proportionate reimbursement under any federal aid highway act, if the United States department of transportation shall finally determine that the cost of relocation is not reimbursable to the department from federal funds, or that the cost of relocation is less than the amount reimbursed to the utility by the department, the utility so reimbursed shall repay to the department the

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difference between the amount so reimbursed to the utility and the cost of
relocation finally determined by the department.

SECTION 3. This act shall take effect on January 1, 2004, the public welfare
requiring it.